

ARTICLE 9. Miscellaneous

§ 12901. Methods of Detection.

(a) For purposes of Section 25249.11, subdivision (c) of the Act, the term “any detectable amount” means a level detected using a method of analysis referred to in this section. For purposes of this section, “method of analysis” refers to the method of detection or detection and calculation for a listed chemical in a specific medium, including but not limited to, water, air, food, or soil, and shall include methods or procedures concerning the number of samples and the frequency and site of sampling that are specific for the listed chemical in question.

(b) Where the California Department of Health Services, the California Department of Pesticide Regulation, the Air Resources Board, a local air pollution control district, the State Water Resources Control Board, or a Regional Water Quality Control Board has adopted or employs a method of analysis for a listed chemical in a specific medium, such method shall be the method of analysis for that chemical in that medium. Where more than one method of analysis has been adopted or is so employed, each may be utilized as the method of analysis.

(c) Where no state or local agency identified in subsection (b) has adopted or employs a method of analysis, a method of analysis for a listed chemical in a specific medium adopted or employed by a federal agency shall be the method of analysis for that chemical in that medium. When more than one method of analysis has been adopted or is so employed, each may be utilized as the method of analysis.

(d) Where no regulatory agency identified in subsection (b) or (c) has adopted or employs a method of analysis, a method of analysis for a listed chemical in a specific medium which is generally accepted by the scientific community, as evidenced by its publication in compilations by professional and scientific associations or societies, such as the Association of Official Analytical Chemists, or in peer-reviewed technical journals published by such associations or societies, such method shall be the method of analysis for that chemical in that medium. When more than one method of analysis is generally accepted, each may be utilized as the method of analysis.

(e) Where no method of analysis as described in subsection (b) or (c) has been adopted or is employed, or is generally accepted by the scientific community as described in subsection (d), and a scientifically valid method of analysis has been developed for a listed chemical in a specific medium, such method shall be the method of analysis for that chemical in that medium. Where more than one method of analysis has been developed for a chemical in a specific medium, each may be utilized as the method of analysis.

(f) In performing an analysis to determine the concentration of a chemical known to the state to cause cancer or reproductive toxicity in a given medium, generally accepted standards and practice for sampling, collection, storage, preparation, chemical analysis, statistical analysis of data, interpretation of results and modeling shall be observed.

(g) For purposes of Sections 25249.5 and 25249.6 of the Act, no discharge, release or exposure occurs unless a listed chemical is detectable as provided in this section.

NOTE: Authority cited: Section 25249.12, Health and Safety Code Section. Reference: Sections 25249.5, 25249.6 and 25249.11, Health and Safety Code.

§ 12902. Formally Required to Be Labeled or Identified as Causing Cancer or Reproductive Toxicity.

(a) In accordance with Section 25249.8(b), of the Act, a chemical is known to the state to cause cancer or reproductive toxicity within the meaning of the Act, and shall be listed pursuant to Section 25249.8(a), of the Act, if the lead agency determines that an agency of the state or federal government has formally required the chemical to be labeled or identified as causing cancer or reproductive toxicity. In making such determination, the lead agency shall act in accordance with this section.

(b) The following definitions shall apply to this section:

(1) “agency of the state or federal government” means the United States Congress or the California State Legislature acting through legislation, any agency, department, office, officer, division, bureau, board or commission of California state government (excluding political subdivisions thereof) or of the United States government, which has the statutory or regulatory authority to require a person or entity outside of that agency to label or identify a chemical as causing cancer or reproductive toxicity.

(2) “formally required” means that a mandatory instruction, order, condition, or similar command, has been issued in accordance with established policies and procedures of an agency of the state or federal government to a person or legal entity outside of the agency. The action of such agency may be directed at one or more persons or legal entities and may include formal requirements of general application.

(3) “labeled” means that a warning message about the carcinogenicity or reproductive toxicity of a chemical is printed, stamped, written, or in any other manner placed upon the container in which the chemical is present or its outer or inner packaging including any material inserted with, attached to, or otherwise accompanying such chemical.

(4) “identified” means that a required message about the carcinogenicity or reproductive toxicity of the chemical is to be disclosed in any manner to a person or legal entity other than the person or legal entity who is required to make such disclosure.

(5) “As causing cancer or reproductive toxicity” means:

(A) For chemicals that cause cancer, the required label or identification uses any words or phrases intended to communicate a risk of cancer or tumors.

(B) For chemicals that cause reproductive toxicity, the required label or identification uses any words or phrases intended to communicate a risk of reproductive harm to men or women or both, or a risk of birth defects or other developmental harm.

(c) Any person may petition the lead agency to consider listing a chemical pursuant to this section. The petition shall be considered only if the petition contains sufficient information to support a determination by the lead agency that substantial evidence exists to support a finding that the chemical meets the requirements of this section.

(d) Any determination by the lead agency under this section may be rescinded or modified in light of additional evidence received by the lead agency establishing that the listing does not satisfy the definitions set forth in this section. Any such action to rescind or modify shall be done pursuant to this section.

NOTE: Authority cited: Section 25249.12, Health and Safety Code Section. Reference: Section 25249.8, Health and Safety Code.

§ 12903. Notices of Violation

(a) For purposes of Section 25249.7(d) of the Act, “notice of the violation which is the subject of the action” (hereinafter “notice”) shall mean a notice meeting all requirements of this section. No person shall commence an action to enforce the provisions of the Act “in the public interest” pursuant to Section 25249.7(d) of the Act except in compliance with all requirements of this section.

(b) Contents of Notice.

(1) General Information. Each notice shall include as an attachment a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary” (see Appendix A) prepared by the lead agency. This attachment need not be included in the copies of notices sent to public enforcement agencies. A copy of this attachment may be obtained by writing to the Office of Environmental Health Hazard Assessment at P.O. Box 4010, Sacramento, CA 95812-4010.

(2) Description of Violation. A notice shall provide adequate information from which to allow the recipient to assess the nature of the alleged violation, as set forth in this paragraph. The provisions of this paragraph shall not be interpreted to require more than reasonably clear information, expressed in terms of common usage and understanding, on each of the indicated topics.

(A) For all notices, the notice shall identify:

1. the name, address, and telephone number of the noticing individual or a responsible individual within the noticing entity and the name of the entity;

2. the name of the alleged violator or violators;

3. the approximate time period during which the violation is alleged to have occurred; and

4. the name of each listed chemical involved in the alleged violation;

(B) For notices of violations of Section 25249.5 of the Act, a general identification of the discharge or release and of the source of drinking water into which the discharges are alleged to have occurred, to be occurring or to be likely to occur.

(C) For all notices of violation of Section 25249.6 of the Act, the route of exposure by which exposure is alleged to occur (e.g., by inhalation, ingestion, dermal contact);

(D) For notices of violation of Section 25249.6 of the Act involving consumer product exposures, the name of the consumer product or service, or the specific type of consumer product or services, that cause the violation, with sufficient specificity to inform the recipients of the nature of the items allegedly sold in violation of the law and to distinguish those products or services from others sold or offered by the alleged violator for which no violation is alleged. The identification of a chemical pursuant to subsection (b)(2)(A)4. must be provided for each product or service identified in the notice.

(E) For notices of violation of Section 25249.6 of the Act involving occupational exposures:

1. the general geographic location of the unlawful exposure to employees, or where the exposure occurs at many locations, a description of the occupation or type of task performed by the exposed persons;

2. where the alleged violator is the manufacturer or distributor of the chemical or products causing the exposure, the notice shall identify products in the same manner as set forth for consumer product exposures in subparagraph (b)(2)(D), above;

(F) For notices of violation of Section 25249.6 of the Act involving environmental exposures as defined in subsection 12601(d) of this chapter, the notice shall identify the location of the source of the exposure. Where numerous sources of the exposure are alleged, the location need not be stated if the notice identifies each facility or source of exposure by stating those common characteristics that result in the allegedly

unlawful exposure in a manner sufficient to distinguish those facilities or sources from others for which no violation is alleged. The notice shall state whether the exposure for which a warning allegedly is required occurs beyond the property owned or controlled by the alleged violators.

(3) Where the alleged violations fall within more than one of the categories described in subparagraph (b)(2)(B) to (b)(2)(F) above, then the notice shall comply with all applicable requirements.

(4) A notice is not required to contain the following information:

(A) The specific retail outlet or time or date at which any product allegedly violating the Act was purchased;

(B) The level of exposure to the chemical in question;

(C) The specific admissible evidence by which the person providing the notice will attempt to prove the violation;

(D) For products, the UPC number, SKU number, model or design number or stock number or other more specific identification of products;

(E) For geographic areas, the lot, block, or other legal description of the property in question.

(c) Service of Notice.

(1) Notices shall be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure.

(2) A certificate of service shall be attached to each notice listing the time, place, and manner of service and each of the parties upon which the notice was served.

(3) Notices shall be served upon each alleged violator, the Attorney General, the district attorney of every county in which a violation is alleged to have occurred, and upon the city attorneys of any cities with populations according to the most recent decennial census of over 750,000 and in which the violation is alleged to have occurred.

(4) Where the alleged violator has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel of the corporation, the notice shall be addressed to one of those persons.

(d) Computation of Time.

(1) An action is deemed to have been “commenced more than sixty days after the person has given notice” where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a “holiday” as defined in Code of Civil Procedure Section 12a, then the “sixtieth day” shall be extended to the next day which is not a “holiday”.

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Section 25249.12, Health and Safety Code Section. Reference: Section 25249.7, Health and Safety Code.

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Governor’s List.” Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals

that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “no significant risk” levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level (NOEL),” divided by a 1,000-fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a “significant amount” of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water

does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” or “no observable effect” test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment’s Proposition 65 Implementation Office at (916) 445-6900.

§ 14000. Chemicals Required By State Or Federal Law To Have Been Tested For Potential To Cause Cancer Or Reproductive Toxicity, But Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state’s qualified experts have not found to have been adequately tested as required [Health and Safety Code Section 25249.8(c)].

Readers should note that a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the “data gap” may continue to exist, for purposes of the state or federal agency’s requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation

The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the United States Environmental Protection Agency (U.S. EPA). The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the first 200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

For purposes of this section, “onc mouse” means oncogenicity in mice, “onc rat” means oncogenicity in rats, “repro” means reproduction, “tera rodent” means teratogenicity in rodents, “tera rabbit” means teratogenicity in rabbits.

<i>Chemical</i>	<i>Testing Needed</i>
Bendiocarb	onc rat, repro, tera rodent
Chloroneb rodent,	onc rat, onc mouse, repro, tera tera rabbit
PCP Petroleum distillates, aromatic rodent,	repro onc rat, onc mouse, repro, tera tera rabbit

(c) Chemicals required to be tested by the U.S. EPA, Office of Toxic Substances.

Under Section 4(a) of the Toxic Substances Control Act, testing of a chemical is required when that chemical may present an unreasonable risk, or is produced in substantial quantities and enters the environment in substantial quantities, or may have significant or substantial human exposure.

For purposes of this section, “tera” means teratogenicity, “rtox” means reproductive toxicity, “onc” means oncogenicity.

<i>Chemical</i>	<i>Testing Needed</i>
Alkyl (C12-13) glycidyl ether	rtox, tera
t-Amyl methyl ether	rtox, tera
Bisphenol A diglycidyl ether	onc, rtox
Cyclohexane*	rtox, tera,
Glycidyl methacrylate*	tera
N-Methylpyrrolidone	onc, rtox
Phenol	rtox

* The Toxic Substances Control Act Section 4 health effects testing programs for cyclohexane and glycidyl methacrylate have been completed and the U.S. EPA’s review of the testing program data is currently underway.

(d) Chemicals required to be tested by the U.S. EPA, Office of Pesticide Programs.

The U.S. EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires U.S. EPA to register pesticides based on data adequate to demonstrate that they will not result in unreasonable adverse effects to people or the environment when used in accordance with their U.S. EPA-approved labels.

In 1988, FIFRA was amended to strengthen U.S. EPA’s pesticide regulatory authority and responsibilities to reregister pesticides registered prior to 1984 to ensure they meet today’s stringent scientific and regulatory standards. Reregistration requires registrants to develop up-to-date data bases for each pesticide active ingredient. As part of the reregistration process, modifications may be made to registrations, labels or tolerances to ensure they are protective of human health and the environment. Also, reregistration reviews will identify any pesticides where regulatory action may be necessary to deal with unreasonable risks. U.S. EPA has been directed to accelerate the reregistration process so that the entire process is completed by 1997. The 1988 amendments set out a five-phase schedule to accomplish this task with deadlines applying to both pesticide registrants and the U.S. EPA. These amendments are requiring a substantial number of new studies to be conducted and old studies to be reformatted for U.S. EPA review to ensure they are adequate. U.S. EPA may, in the future, request additional data or information to further evaluate any concerns over the safety of pesticide products.

The chemicals listed below are those for which data are unavailable or inadequate to characterize oncogenicity, teratogenicity, or reproductive effects potential. For purposes of this section, “onc” means oncogenicity, “tera” means teratogenicity, and “repro” means reproductive toxicity.

<i>Chemical</i>	<i>Data Requirements</i>
Acrolein	onc, tera
Alkyl imidazolines	tera
Ametryn	repro, tera
4-Aminopyridine	onc, repro, tera
4-T-Amylphenol	onc, repro
Aquashade	onc, repro, tera
Bensulide	onc, repro, tera
Benzisothiazolin-3-one	onc, repro, tera
Brodifacoum	repro
Bromonitrostyrene	tera
Busan 77	repro
Chlorflurenol methyl	tera
Chlorophacinone	tera
Chloropicrin	onc, repro
Chromated arsenicals	tera
Cycloate	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Diclofop-methyl	onc
Dicrotophos	onc, repro
Dihalodialkylhydantoins	onc, repro, tera
Dimethepin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Diphacinone and salts	onc, repro, tera
Diphenylamine	onc, tera
Dipropyl isocinchomeronate	repro
Diuron	onc
Dodine	onc, repro, tera
Endothall and salts	onc, repro, tera
Ethofumesate	onc
Ethoxyquin	tera

Fenthion	tera
Fenvalerate	onc, repro, tera
Fluvalinate	repro
Hydroxy-methyldithiocarbamate	tera
Imazalil	onc
Inorganic chlorates	onc, repro, tera
Inorganic sulfites	onc, repro, tera
Iodine-potassium iodide	tera
Iprodione	tera
Irgasan	onc, repro, tera
Lamprecide	onc, repro
Magnesium phosphide	onc
Malathion	onc
Maneb	tera
MCPB and salts	tera
Mefluidide and salts	tera
Mepiquat chloride	tera
Metaldehyde	onc, tera
Methoxychlor	onc, repro, tera
Methyl isothiocyanate	tera
Methyl parathion	tera
Methyldithiocarbamate	repro
MGK 264	tera
Molinate	repro
Naphthalene	onc
Naphthaleneacetic acid	onc, repro
Naphthenate salts	tera
Napropamide	repro
Niclosamide	onc, tera
Nicotine and derivatives	onc, tera
Nitrapyrin	onc
4-Nitrophenol	onc, repro, tera
Octhilinone	tera
Oil of Pennyroyal	tera
Omadine salts	onc, repro, tera
Oxadiazon	repro
Oxyfluorfen	onc
Pebulate	tera
Perfluidone	tera

Phenmedipham	onc
Phenol and salts	tera
2-Phenylphenol and salts	onc, tera
Pine oils	tera
Piperonyl butoxide	tera
Poly (hexamethylene biguanide)	onc, repro
Polyethoxylated aliphatic alcohols	onc, repro, tera
Prometon	tera
Propanil	onc, repro
Propetamphos	tera
Propiconazole	onc
Propylene oxide	tera
Pyrazon	onc, repro
Pyrethrin and derivatives	onc, tera
Pyrimidinone	onc, tera
Sethoxydim	onc
Siduron	onc, repro, tera
Sodium fluoride	tera
Sulfometuron-methyl	onc, tera
TBT-containing compounds	onc, tera
TCMB	onc, repro, tera
Temephos	onc, tera
Tetrachlorvinphos	onc
Tetramethrin	onc
Thiabendazole and salts	onc, repro, tera
Thidiazuron	onc, repro, tera
Thiodicarb	tera
Thiophanate-methyl	onc, tera
Thiram	onc
Triadimefon	onc
Triclopyr and salts	onc
Vernolate	onc, repro

Revised: January 1, 2002